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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **1139**

03/04/2013 Authored by Lieblich and Abeler

The bill was read for the first time and referred to the Committee on Health and Human Services Policy

03/18/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Judiciary Finance and Policy

05/14/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Rules and Legislative Administration

1.1 A bill for an act
1.2 relating to human services; modifying provisions related to the Minnesota
1.3 sex offender program; requiring a public education campaign; modifying the
1.4 Civil Commitment Act; amending Minnesota Statutes 2012, sections 246B.10;
1.5 253B.18, subdivision 4c; 253B.185, subdivisions 1, 10, 11, 11a, 11b, 12, 14, 14a,
1.6 15, 17, 18, by adding subdivisions; 253B.19, subdivisions 2, 3, by adding a
1.7 subdivision; 609.485, subdivision 2; repealing Minnesota Statutes 2012, section
1.8 253B.185, subdivision 9.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 **ARTICLE 1**

1.11 **STRICT AND INTENSIVE SUPERVISION AND TREATMENT AND**
1.12 **PUBLIC EDUCATION CAMPAIGN**

1.13 Section 1. **STRICT AND INTENSIVE SUPERVISION AND TREATMENT.**

1.14 The commissioner of human services shall ensure a regimen of treatment that
1.15 provides strict and intensive supervision and treatment (SIST) for individuals civilly
1.16 committed under Minnesota Statutes, section 253B.185, who are court-ordered to strict
1.17 and intensive supervision and treatment placement or placed on provisional discharge. The
1.18 SIST must meet public safety requirements as specified by the commissioners of human
1.19 services, public safety, and corrections, and ensure the safety of the public while meeting
1.20 the treatment needs of the civilly committed population. The commissioner shall use the
1.21 information resulting from the January 2013 request for information to determine existing
1.22 capacity for a range of options for SIST that are effective and appropriate and allows
1.23 progression. The commissioner shall contract with existing providers to provide SIST.

1.24 Sec. 2. **EDUCATION RELATING TO SEX OFFENDER CIVIL COMMITMENT**
1.25 **PROCEDURAL CHANGES.**

2.1 The commissioner of human services, in partnership with the ombudsman for mental
 2.2 health and developmental disabilities, shall develop and provide education to judges and
 2.3 court staff, county attorneys and other lawyers, and court-appointed examiners about
 2.4 the civil commitment procedural changes under article 2 and the strict and intensive
 2.5 supervision and treatment under section 1.

2.6 **Sec. 3. PUBLIC EDUCATION CAMPAIGN.**

2.7 The commissioner of human services shall develop a public education campaign
 2.8 informing the general public about the 2012 class action lawsuit relating to the Minnesota
 2.9 sex offender program (MSOP), the court's rulings, including the order from the court
 2.10 establishing the Sex Offender Civil Commitment Advisory Task Force and the work of
 2.11 the task force, and the response by the legislature resulting in the legislation in this act.
 2.12 The public education campaign must be a statewide effort to educate Minnesotans on
 2.13 the process of civilly committing sex offenders and the emerging policy in response to
 2.14 the court's decisions, and related issues.

2.15 **EFFECTIVE DATE.** This section is effective July 1, 2013. The commissioner of
 2.16 human services shall implement this article as soon as practicable.

2.17 **ARTICLE 2**

2.18 **CIVIL COMMITMENT MODIFICATIONS**

2.19 Section 1. Minnesota Statutes 2012, section 246B.10, is amended to read:

2.20 **246B.10 LIABILITY OF COUNTY; REIMBURSEMENT.**

2.21 The civilly committed sex offender's county shall pay to the state a portion of the
 2.22 cost of care provided ~~in~~ by or through the Minnesota sex offender program to a civilly
 2.23 committed sex offender who has legally settled in that county. Cost of care includes care,
 2.24 housing, and supervision provided to a civilly committed sex offender who is placed
 2.25 on strict and intensive supervision and treatment or provisional discharge. A county's
 2.26 payment must be made from the county's own sources of revenue and payments must equal
 2.27 25 percent of the cost of care, as determined by the commissioner, for each day or portion
 2.28 of a day, that the civilly committed sex offender spends at ~~the~~ a Minnesota sex offender
 2.29 program facility or on strict and intensive supervision and treatment or provisional
 2.30 discharge. If payments received by the state under this chapter exceed 75 percent of the
 2.31 cost of care, the county is responsible for paying the state the remaining amount. The
 2.32 county is not entitled to reimbursement from the civilly committed sex offender, the civilly
 2.33 committed sex offender's estate, or from the civilly committed sex offender's relatives,

3.1 except as provided in section 246B.07. For purposes of this section, cost of care begins
3.2 after the order for commitment under section 253B.185, subdivision 1, paragraph (c).

3.3 Sec. 2. Minnesota Statutes 2012, section 253B.18, subdivision 4c, is amended to read:

3.4 Subd. 4c. **Special review board.** (a) The commissioner shall establish one or more
3.5 panels of a special review board. The board shall consist of three members experienced
3.6 in the field of mental illness. One member of each special review board panel shall be
3.7 a psychiatrist and one member shall be an attorney. No member shall be affiliated with
3.8 the Department of Human Services. The special review board shall meet at least every
3.9 six months and at the call of the commissioner. It shall hear and consider all petitions for
3.10 a reduction in custody or to appeal a revocation of provisional discharge. A "reduction
3.11 in custody" means transfer from a secure treatment facility, discharge, and provisional
3.12 discharge. Patients may be transferred by the commissioner between secure treatment
3.13 facilities without a special review board hearing.

3.14 Members of the special review board shall receive compensation and reimbursement
3.15 for expenses as established by the commissioner.

3.16 (b) A petition filed by a person committed as mentally ill and dangerous to the
3.17 public under this section must be heard as provided in subdivision 5 and, as applicable,
3.18 subdivision 13. A petition filed by a person committed as a sexual psychopathic
3.19 personality or as a sexually dangerous person under section 253B.185, or committed
3.20 as both mentally ill and dangerous to the public under this section and as a sexual
3.21 psychopathic personality or as a sexually dangerous person must be heard as provided in
3.22 section ~~253B.185, subdivision 9~~ 253B.19, subdivisions 2, paragraph (b); and 2a.

3.23 Sec. 3. Minnesota Statutes 2012, section 253B.185, subdivision 1, is amended to read:

3.24 Subdivision 1. **Commitment generally.** (a) Except as otherwise provided in this
3.25 section, the provisions of this chapter pertaining to persons who are mentally ill and
3.26 dangerous to the public apply with like force and effect to persons who are alleged or
3.27 found to be sexually dangerous persons or persons with a sexual psychopathic personality.
3.28 For purposes of this section, "sexual psychopathic personality" includes any individual
3.29 committed as a "psychopathic personality" under Minnesota Statutes 1992, section 526.10.

3.30 (b) Before commitment proceedings are instituted, the facts shall first be submitted
3.31 to the county attorney, who, if satisfied that good cause exists, will prepare the petition.
3.32 The county attorney may request a prepetition screening report. The petition is to be
3.33 executed by a person having knowledge of the facts and filed with the district court of the
3.34 county of financial responsibility or the county where the patient is present. If the patient

4.1 is in the custody of the commissioner of corrections, the petition may be filed in the county
4.2 where the conviction for which the person is incarcerated was entered.

4.3 (c) Upon the filing of a petition alleging that a proposed patient is a sexually
4.4 dangerous person or is a person with a sexual psychopathic personality, the court shall
4.5 hear the petition as provided in ~~section 253B.18, except that section 253B.18, subdivisions~~
4.6 ~~2 and 3, shall not apply~~ sections 253B.07 and 253B.08.

4.7 If the court finds by clear and convincing evidence that the proposed patient is a sexually
4.8 dangerous person or is a person with a sexual psychopathic personality, the court shall
4.9 commit the person to the commissioner to place in a secure treatment facility for
4.10 evaluation and proposed disposition. The Minnesota sex offender program is not required
4.11 to provide sex offender treatment to the person until after the court's disposition order.

4.12 (d) ~~In commitments under this section, the court shall commit the patient to a secure~~
4.13 ~~treatment facility unless the patient establishes by clear and convincing evidence that a~~
4.14 ~~less restrictive treatment program is available that is consistent with the patient's treatment~~
4.15 ~~needs and the requirements of public safety. Within 60 days following commitment and~~
4.16 ~~receipt of the patient, a qualified person or persons designated by the commissioner~~
4.17 ~~shall evaluate the patient, consider possible dispositions, and file a written disposition~~
4.18 ~~report with the committing court. If the person is in the custody of the commissioner of~~
4.19 ~~corrections when the commitment is ordered under paragraph (c), the written disposition~~
4.20 ~~report must be filed no later than 60 days after the person is admitted to the secure~~
4.21 ~~treatment facility. However, the commissioner may perform part or all of the evaluation,~~
4.22 ~~including providing the disposition report to the court, before the person is received by~~
4.23 ~~the commissioner. The commissioner may request that the court grant an extension of~~
4.24 ~~the 60-day deadline, which may be granted for good cause after opportunity for objection~~
4.25 ~~by the patient and the county attorney. The disposition report must recommend whether~~
4.26 ~~the person should be placed on strict and intensive supervision and treatment or in a~~
4.27 ~~secure treatment facility. If the recommendation is for placement on strict and intensive~~
4.28 ~~supervision and treatment, the report must specifically describe the conditions that the~~
4.29 ~~program determines would be best suited to meet the person's treatment needs and the~~
4.30 ~~requirements of public safety. Within 30 days after receiving the disposition report, unless~~
4.31 ~~otherwise agreed by the parties, the court shall hold a hearing to make a final determination~~
4.32 ~~as to the appropriate disposition of the case. If the disposition report recommends~~
4.33 ~~placement on strict and intensive supervision and treatment, either party or the court may~~
4.34 ~~request the court examiners to address the sufficiency and conditions of the plan.~~

4.35 (e) Between the time of the commitment order under paragraph (c) and the court's
4.36 disposition order under paragraph (d), with the agreement of the committed person the

5.1 person may be held in a Department of Corrections facility according to the provisions of
5.2 section 253B.045, subdivision 1a, even though the person is not under a judicial hold order
5.3 under section 253B.07, subdivision 2b or 7. During any time the person is confined in a
5.4 Department of Corrections facility under this paragraph, the county's responsibility for
5.5 costs of confinement shall not exceed 25 percent, and the Department of Human Services
5.6 shall reimburse the Department of Corrections for the remaining 75 percent.

5.7 (f) At the time of commitment, the court shall provide the commissioner copies
5.8 of the court-appointed examiners' reports and the exhibits admitted in the case. Upon
5.9 request of the evaluator, the county attorney shall provide copies of records gathered by
5.10 the county attorney for purposes of the case. Upon request, the evaluator is entitled to
5.11 promptly obtain records and data regarding the committed person from the Department of
5.12 Corrections, a probation or parole agency, and a program or provider that has provided sex
5.13 offender or mental health evaluation or treatment to the committed person.

5.14 (g) A person committed under this section is not eligible for and shall not receive
5.15 a pass. Section 253B.18, subdivisions 4a and 4b, do not apply to a person committed
5.16 under this section.

5.17 (e) (h) After a final determination that a patient is a sexually dangerous person or
5.18 sexual psychopathic personality, the court shall order commitment for an indeterminate
5.19 period of time and the patient shall be transferred, provisionally discharged, or discharged,
5.20 only as provided in this section.

5.21 Sec. 4. Minnesota Statutes 2012, section 253B.185, is amended by adding a
5.22 subdivision to read:

5.23 Subd. 1c. **Strict and intensive supervision and treatment.** (a) If a specific plan for
5.24 strict and intensive supervision and treatment is proposed in the disposition report or by
5.25 the committed person, the court shall commit the person to strict and intensive supervision
5.26 and treatment, unless the petitioner proves by a preponderance of the evidence that the
5.27 plan is not sufficient to meet the person's treatment needs or the requirements of public
5.28 safety. If no specific plan is presented, or if the court determines that no plan that is
5.29 proposed is sufficient, the court shall commit the person to a secure treatment facility.

5.30 (b) If the court finds that strict and intensive supervision and treatment is appropriate,
5.31 the court shall notify the Minnesota sex offender program, which must prepare a plan
5.32 that identifies the treatment and services for the patient, including recommendations
5.33 regarding the conditions of strict and intensive supervision and treatment. The plan must
5.34 be presented to the court for its approval within 60 days after the court finds that strict
5.35 and intensive supervision and treatment is appropriate, unless the program or the patient

6.1 requests additional time to develop the plan and the court determines there is good cause
6.2 to allow an extension for a specified period.

6.3 (c) An order for strict and intensive supervision and treatment places the patient
6.4 in the custody and control of the commissioner of human services for the provision of
6.5 treatment, services, and supervision under the Minnesota sex offender program and the
6.6 patient is subject to the conditions set by the court and the program, which must ensure the
6.7 safety of the public while meeting the treatment needs of the civilly committed patient.

6.8 (d) If the program determines that a patient under this subdivision has violated a
6.9 condition under paragraph (c) or is exhibiting behavior that may be dangerous to self or
6.10 others or that the interests of public safety require that strict and intensive supervision and
6.11 treatment placement be revoked, the program may, using the procedures in subdivisions
6.12 15, paragraphs (b) and (c); and 16, revoke the patient's placement on strict and intensive
6.13 supervision and treatment and place the patient in a secure treatment facility. The patient
6.14 may appeal the revocation using the procedures in section 253B.185, subdivision 17,
6.15 except that appeal is to the committing court. If the committing court determines that
6.16 a condition of the strict and intensive supervision and treatment placement has been
6.17 violated or that the safety of the patient or others requires that the strict and intensive
6.18 supervision and treatment placement be revoked, the court shall affirm the revocation of
6.19 the strict and intensive supervision and treatment placement and order an appropriate
6.20 commitment placement under this section. The court may also, after notice to the parties
6.21 and opportunity for hearing, reinstate the person on strict and intensive supervision under
6.22 modified conditions the court determines are sufficient to satisfy the person's treatment
6.23 needs and the requirements of public safety. If the court finds there was no violation
6.24 and that the safety of the committed person or others does not require that the strict and
6.25 intensive supervision be revoked, it shall reverse the revocation and order that the strict
6.26 and intensive supervision placement be reinstated.

6.27 (e) This subdivision does not affect or replace any applicable registration
6.28 requirements under section 243.166 or notice requirements under sections 244.052 and
6.29 244.053.

6.30 Sec. 5. Minnesota Statutes 2012, section 253B.185, is amended by adding a
6.31 subdivision to read:

6.32 Subd. 9a. **Biennial review.** (a) Within 24 months after the date of the disposition
6.33 order under subdivision 1c, paragraph (a), and after that time at least once each 24 months,
6.34 the commissioner shall arrange for an examination of the committed person. The director
6.35 of the evaluation unit under subdivision 9b shall appoint an examiner to perform the

7.1 examination. The director shall establish procedures to provide that the committed
7.2 person will have a role in choosing the examiner from the evaluation unit to conduct the
7.3 examination, by objecting to a particular examiner or using another method adopted by the
7.4 director. The director shall establish procedures to allow the committed person to retain an
7.5 additional examiner at the person's expense or to request the appointment of an additional
7.6 examiner by the judicial appeal panel. Compensation for an appointed examiner who is
7.7 not part of the evaluation unit shall be determined by the judicial appeal panel.

7.8 (b) An examiner conducting an examination under paragraph (a) shall prepare a
7.9 written report of the examination no later than 30 days after the date of the examination.

7.10 The report must examine and assess the patient's:

7.11 (1) progress toward treatment goals;

7.12 (2) risk to the public; and

7.13 (3) suitability for an alternative placement that balances the patient's continued
7.14 treatment needs and public safety. The examiner shall provide a copy of the report to the
7.15 county attorneys of the committing county and the county of financial responsibility, the
7.16 commissioner, and the judicial appeal panel.

7.17 (c) Notwithstanding paragraph (a), the judicial appeal panel may order an
7.18 examination of the person at any time during the period in which the person is subject to
7.19 the commitment order. The examination must be conducted pursuant to this subdivision.

7.20 (d) At any examination under paragraph (a), the executive clinical director of the
7.21 Minnesota sex offender program shall prepare a treatment progress report. The executive
7.22 clinical director shall provide a copy of the treatment progress report to the commissioner.

7.23 The treatment progress report must consider all of the following:

7.24 (1) the specific factors associated with the person's risk for committing another
7.25 sexually violent offense;

7.26 (2) whether the person has made significant progress in treatment or has refused
7.27 treatment;

7.28 (3) the ongoing treatment needs of the person; and

7.29 (4) any specialized needs or conditions associated with the person that must be
7.30 considered in future treatment planning.

7.31 (e) Examiners under paragraph (a) and the executive clinical director under paragraph
7.32 (d) must have reasonable access to the person for purposes of examination, to the person's
7.33 past and present treatment and supervision records, and to the person's health care records.

7.34 (f) The commissioner shall submit a biennial report comprised of the examination
7.35 report under paragraph (a) and the treatment progress report under paragraph (d) to
7.36 the judicial appeal panel. A copy of the biennial report must be placed in the person's

8.1 treatment records. The commissioner shall provide a copy of the biennial report to the
8.2 patient and the county attorneys of the committing county and the county of financial
8.3 responsibility. The panel shall provide a copy of the biennial report to the patient's
8.4 attorney as soon as the attorney is retained or appointed.

8.5 (g) If a person committed under this section is incarcerated for a new criminal charge
8.6 or conviction, any reporting requirement under paragraph (a), (d), or (f) does not apply
8.7 during the incarceration period. The judicial appeal panel may order an examination of the
8.8 person under paragraph (c) if the panel finds an examination is necessary. The required
8.9 reports are due 24 months after the person is returned to the custody and control of the
8.10 commissioner of human services under the Minnesota sex offender program.

8.11 (h) Failure to complete or file any required report within the specified time period
8.12 does not affect the validity of the person's continuing commitment.

8.13 Sec. 6. Minnesota Statutes 2012, section 253B.185, is amended by adding a
8.14 subdivision to read:

8.15 Subd. 9b. **Evaluation unit for biennial reviews.** The commissioner shall create an
8.16 evaluation unit to perform the periodic reviews provided by subdivision 9a, paragraph
8.17 (a). The commissioner shall designate a person as the director of the unit for purposes of
8.18 that provision, and shall employ a sufficient number of qualified persons to perform the
8.19 examinations. Such persons must meet the definition of "examiner" in section 253B.02,
8.20 subdivision 7, clause (1) or (2), and must have specific training in evaluating risk of
8.21 re-offense among sex offenders and have experience in the treatment, diagnosis, or
8.22 management of sex offenders. The commissioner shall provide training for the examiners
8.23 to ensure the quality and promote the uniformity of the examinations. The training shall
8.24 include risk assessment, evaluation of efficacy and progress in sex offender treatment,
8.25 types of strict and intensive supervision and treatment options available, the supervision
8.26 that would be available to persons placed on strict and intensive supervision and treatment,
8.27 and other matters determined appropriate by the commissioner. Members of the evaluation
8.28 unit must be free to exercise independent professional judgment without pressure or
8.29 retaliation for the exercise of that judgment from any source.

8.30 Sec. 7. Minnesota Statutes 2012, section 253B.185, subdivision 10, is amended to read:

8.31 **Subd. 10. Victim notification of petition and release; right to submit statement.**

8.32 (a) As used in this subdivision:

8.33 (1) "crime" has the meaning given to "violent crime" in section 609.1095, and
8.34 includes criminal sexual conduct in the fifth degree and offenses within the definition of

9.1 "crime against the person" in section 253B.02, subdivision 4a, and also includes offenses
9.2 listed in section 253B.02, subdivision 7a, paragraph (b), regardless of whether they are
9.3 sexually motivated;

9.4 (2) "victim" means a person who has incurred loss or harm as a result of a crime,
9.5 the behavior for which forms the basis for a commitment under this section or section
9.6 253B.18; and

9.7 (3) "convicted" and "conviction" have the meanings given in section 609.02,
9.8 subdivision 5, and also include juvenile court adjudications, findings under Minnesota
9.9 Rules of Criminal Procedure, rule 20.02, that the elements of a crime have been proved,
9.10 and findings in commitment cases under this section or section 253B.18, that an act or
9.11 acts constituting a crime occurred.

9.12 (b) A county attorney who files a petition to commit a person under this section shall
9.13 make a reasonable effort to provide prompt notice of filing the petition to any victim of a
9.14 crime for which the person was convicted. In addition, the county attorney shall make a
9.15 reasonable effort to promptly notify the victim of the resolution of the petition.

9.16 (c) Before provisionally discharging, discharging, ~~granting pass-eligible status,~~
9.17 ~~approving a pass plan,~~ or otherwise permanently or temporarily releasing a person
9.18 committed under this section from a treatment facility, the head of the treatment facility
9.19 shall make a reasonable effort to notify any victim of a crime for which the person was
9.20 convicted that the person may be discharged or released and that the victim has a right
9.21 to submit a written statement regarding decisions of the ~~head of the treatment facility~~
9.22 ~~or designee, or special review board,~~ judicial appeal panel with respect to the person.
9.23 To the extent possible, the notice must be provided at least 14 days before any ~~special~~
9.24 ~~review board~~ judicial appeal panel hearing ~~or before a determination on a pass plan.~~
9.25 Notwithstanding section 611A.06, subdivision 4, the commissioner shall provide the
9.26 judicial appeal panel with victim information in order to comply with the provisions of
9.27 this section. The judicial appeal panel shall ensure that the data on victims remains private
9.28 as provided for in section 611A.06, subdivision 4.

9.29 (d) This subdivision applies only to victims who have requested notification through
9.30 the Department of Corrections electronic victim notification system, or by contacting, in
9.31 writing, the county attorney in the county where the conviction for the crime occurred or
9.32 where the civil commitment was filed or, following commitment, the head of the treatment
9.33 facility. A request for notice under this subdivision received by the commissioner of
9.34 corrections through the Department of Corrections electronic victim notification system
9.35 shall be promptly forwarded to the prosecutorial authority with jurisdiction over the offense
9.36 to which the notice relates or, following commitment, the head of the treatment facility. A

10.1 county attorney who receives a request for notification under this paragraph following
10.2 commitment shall promptly forward the request to the commissioner of human services.

10.3 (e) Rights under this subdivision are in addition to rights available to a victim under
10.4 chapter 611A. This provision does not give a victim all the rights of a "notified person"
10.5 or a person "entitled to statutory notice" under subdivision 12 or 13 or section 253B.18,
10.6 subdivision 4a, 4b, or 5.

10.7 Sec. 8. Minnesota Statutes 2012, section 253B.185, subdivision 11, is amended to read:

10.8 Subd. 11. **Transfer.** (a) A patient who is committed as a sexually dangerous person
10.9 or sexual psychopathic personality shall not be transferred out of a secure treatment
10.10 facility unless it appears to the satisfaction of the judicial appeal panel, ~~after a hearing and~~
10.11 ~~recommmendation by a majority of the special review board,~~ that the transfer is appropriate.
10.12 Transfer may be to other treatment programs under the commissioner's control.

10.13 (b) The following factors must be considered in determining whether a transfer
10.14 is appropriate:

10.15 (1) the person's clinical progress and present treatment needs;

10.16 (2) the need for security to accomplish continuing treatment;

10.17 (3) the need for continued institutionalization;

10.18 (4) which facility can best meet the person's needs; and

10.19 (5) whether transfer can be accomplished with a reasonable degree of safety for
10.20 the public.

10.21 Sec. 9. Minnesota Statutes 2012, section 253B.185, subdivision 11a, is amended to read:

10.22 Subd. 11a. **Transfer; voluntary readmission to a secure facility.** (a) After a
10.23 patient has been transferred out of a secure facility pursuant to subdivision 11 and with the
10.24 consent of the executive director of the Minnesota sex offender program, a patient may
10.25 voluntarily return to a secure facility operated by the Minnesota sex offender program for
10.26 a period of up to 60 days.

10.27 (b) If the patient is not returned to the facility to which the patient was originally
10.28 transferred pursuant to subdivision 11 within 60 days of being readmitted to a secure
10.29 facility, the transfer is revoked and the patient shall remain in a secure facility. The patient
10.30 shall immediately be notified in writing of the revocation.

10.31 (c) Within 15 days of receiving notice of the revocation, the patient may petition
10.32 the ~~special review board~~ judicial appeal panel for a review of the revocation. The ~~special~~
10.33 ~~review board~~ judicial appeal panel shall review the circumstances of the revocation and
10.34 shall ~~recommmend to the judicial appeal panel~~ determine whether or not the revocation shall

11.1 be upheld. The ~~special review board~~ judicial appeal panel may also ~~recommen~~d order a
11.2 new transfer at the time of the revocation hearing.

11.3 (d) If the transfer has not been revoked and the patient is to be returned to the
11.4 facility to which the patient was originally transferred pursuant to subdivision 11, with no
11.5 substantive change to the conditions of the transfer ordered pursuant to subdivision 11, no
11.6 action by the ~~special review board~~ or judicial appeal panel is required.

11.7 Sec. 10. Minnesota Statutes 2012, section 253B.185, subdivision 11b, is amended to
11.8 read:

11.9 Subd. 11b. **Transfer; revocation.** (a) The executive director of the Minnesota sex
11.10 offender program or designee may revoke a transfer made pursuant to subdivision 11 and
11.11 require a patient to return to a secure treatment facility if:

11.12 (1) remaining in a nonsecure setting will not provide a reasonable degree of safety to
11.13 the patient or others; or

11.14 (2) the patient has regressed in clinical progress so that the facility to which the
11.15 patient was transferred is no longer sufficient to meet the patient's needs.

11.16 (b) Upon the revocation of the transfer, the patient shall be immediately returned to a
11.17 secure treatment facility. A report documenting reasons for revocation shall be issued by
11.18 the executive director or designee within seven days after the patient is returned to the
11.19 secure treatment facility. Advance notice to the patient of the revocation is not required.

11.20 (c) The patient must be provided a copy of the revocation report and informed, orally
11.21 and in writing, of the rights of a patient under this subdivision. The revocation report shall
11.22 be served upon the patient and the patient's counsel. The report shall outline the specific
11.23 reasons for the revocation including, but not limited to, the specific facts upon which
11.24 the revocation recommendation is based.

11.25 (d) A patient whose transfer is revoked must successfully re-petition the ~~special~~
11.26 ~~review board~~ and judicial appeal panel prior to being transferred out of a secure facility.

11.27 (e) Any patient aggrieved by a transfer revocation decision may petition the ~~special~~
11.28 ~~review board~~ judicial appeal panel within seven days, exclusive of Saturdays, Sundays,
11.29 and legal holidays, after receipt of the revocation report for a review of the revocation.
11.30 The matter shall be scheduled within 30 days. The ~~special review board~~ judicial appeal
11.31 panel shall review the circumstances leading to the revocation and, after considering the
11.32 factors in subdivision 11, paragraph (b), shall ~~recommen~~d ~~to the judicial appeal panel~~
11.33 determine whether or not the revocation shall be upheld. The ~~special review board~~ judicial
11.34 appeal panel may also ~~recommen~~d order a new transfer out of a secure facility at the
11.35 time of the revocation hearing.

12.1 Sec. 11. Minnesota Statutes 2012, section 253B.185, subdivision 12, is amended to read:

12.2 Subd. 12. **Provisional discharge.** A patient who is committed as a sexual
12.3 psychopathic personality or sexually dangerous person shall not be provisionally
12.4 discharged unless it appears to the satisfaction of the judicial appeal panel, ~~after a hearing~~
12.5 ~~and a recommendation by a majority of the special review board,~~ that the patient is capable
12.6 of making an acceptable adjustment to open society.

12.7 The following factors are to be considered in determining whether a provisional
12.8 discharge shall be ~~recommended~~ granted:

12.9 (1) whether the patient's course of treatment and present mental status indicate there is
12.10 no longer a need for treatment and supervision in the patient's current treatment setting; and

12.11 (2) whether the conditions of the provisional discharge plan will provide a reasonable
12.12 degree of protection to the public and will enable the patient to adjust successfully to
12.13 the community.

12.14 Sec. 12. Minnesota Statutes 2012, section 253B.185, subdivision 14, is amended to read:

12.15 Subd. 14. **Provisional discharge; review.** A provisional discharge pursuant to this
12.16 section shall not automatically terminate. A full discharge shall occur only as provided in
12.17 subdivision 18. The commissioner shall notify the patient that the terms of a provisional
12.18 discharge continue unless the patient requests and is granted a change in the conditions
12.19 of provisional discharge or unless the patient petitions the ~~special review board~~ judicial
12.20 appeal panel for a full discharge and the discharge is granted ~~by the judicial appeal panel~~.

12.21 Sec. 13. Minnesota Statutes 2012, section 253B.185, subdivision 14a, is amended to
12.22 read:

12.23 Subd. 14a. **Provisional discharge; voluntary readmission.** (a) With the consent of
12.24 the executive director of the Minnesota sex offender program, a patient may voluntarily
12.25 return to the Minnesota sex offender program from provisional discharge for a period of
12.26 up to 60 days.

12.27 (b) If the patient is not returned to provisional discharge status within 60 days of
12.28 being readmitted to the Minnesota sex offender program, the provisional discharge is
12.29 revoked. The patient shall immediately be notified of the revocation in writing. Within 15
12.30 days of receiving notice of the revocation, the patient may request a review of the matter
12.31 before the ~~special review board~~ judicial appeal panel. The ~~special review board~~ judicial
12.32 appeal panel shall review the circumstances of the revocation and, after applying the
12.33 standards in subdivision 15, paragraph (a), shall ~~recommend to the judicial appeal panel~~

13.1 determine whether or not the revocation shall be upheld. The ~~board~~ judicial appeal panel
13.2 may ~~recomm~~end order a return to provisional discharge status.

13.3 (c) If the provisional discharge has not been revoked and the patient is to be returned
13.4 to provisional discharge, the Minnesota sex offender program is not required to petition for
13.5 a further review by the ~~special review board~~ judicial appeal panel unless the patient's return
13.6 to the community results in substantive change to the existing provisional discharge plan.

13.7 Sec. 14. Minnesota Statutes 2012, section 253B.185, subdivision 15, is amended to read:

13.8 Subd. 15. **Provisional discharge; revocation.** (a) The head of the treatment facility
13.9 may revoke a provisional discharge if either of the following grounds exist:

13.10 (1) the patient has departed from the conditions of the provisional discharge plan; or

13.11 (2) the patient is exhibiting behavior which may be dangerous to self or others.

13.12 (b) The head of the treatment facility may revoke the provisional discharge and,
13.13 either orally or in writing, order that the patient be immediately returned to the treatment
13.14 facility. A report documenting reasons for revocation shall be issued by the head of the
13.15 treatment facility within seven days after the patient is returned to the treatment facility.
13.16 Advance notice to the patient of the revocation is not required.

13.17 (c) The patient must be provided a copy of the revocation report and informed, orally
13.18 and in writing, of the rights of a patient under this section. The revocation report shall be
13.19 served upon the patient, the patient's counsel, and the designated agency. The report shall
13.20 outline the specific reasons for the revocation, including but not limited to the specific
13.21 facts upon which the revocation recommendation is based.

13.22 (d) An individual who is revoked from provisional discharge must successfully
13.23 re-petition the ~~special review board~~ and judicial appeal panel prior to being placed back
13.24 on provisional discharge.

13.25 Sec. 15. Minnesota Statutes 2012, section 253B.185, subdivision 17, is amended to read:

13.26 Subd. 17. **Appeal.** Any patient aggrieved by a revocation decision or any interested
13.27 person may petition the ~~special review board~~ judicial appeal panel within seven days,
13.28 exclusive of Saturdays, Sundays, and legal holidays, after receipt of the revocation report
13.29 for a review of the revocation. The matter shall be scheduled within 30 days. The
13.30 ~~special review board~~ judicial appeal panel shall review the circumstances leading to the
13.31 revocation and shall ~~recomm~~end to the ~~judicial appeal panel~~ determine whether or not
13.32 the revocation shall be upheld. The ~~special review board~~ judicial appeal panel may also
13.33 ~~recomm~~end order a new provisional discharge at the time of the revocation hearing.

14.1 Sec. 16. Minnesota Statutes 2012, section 253B.185, subdivision 18, is amended to read:

14.2 Subd. 18. **Discharge.** A patient who is committed as a sexual psychopathic
14.3 personality or sexually dangerous person shall not be discharged unless it appears to the
14.4 satisfaction of the judicial appeal panel, ~~after a hearing and recommendation by a majority~~
14.5 ~~of the special review board,~~ that the patient is capable of making an acceptable adjustment
14.6 to open society, is no longer dangerous to the public, and is no longer in need of inpatient
14.7 treatment and supervision.

14.8 In determining whether a discharge shall be recommended, the ~~special review board~~
14.9 ~~and~~ judicial appeal panel shall consider whether specific conditions exist to provide a
14.10 reasonable degree of protection to the public and to assist the patient in adjusting to the
14.11 community. If the desired conditions do not exist, the discharge shall not be granted.

14.12 Sec. 17. Minnesota Statutes 2012, section 253B.19, subdivision 2, is amended to read:

14.13 Subd. 2. **Petition; hearing.** (a) A person committed as mentally ill and dangerous
14.14 to the public under section 253B.18, or the county attorney of the county from which the
14.15 person was committed or the county of financial responsibility, may petition the judicial
14.16 appeal panel for a rehearing and reconsideration of a decision by the commissioner under
14.17 section 253B.18, subdivision 5. The judicial appeal panel must not consider petitions for
14.18 relief other than those considered by the commissioner from which the appeal is taken.
14.19 The petition must be filed with the Supreme Court within 30 days after the decision of
14.20 the commissioner is signed. The hearing must be held within 45 days of the filing of the
14.21 petition unless an extension is granted for good cause.

14.22 ~~(b) A person committed as a sexual psychopathic personality or as a sexually~~
14.23 ~~dangerous person under section 253B.185, or committed as both mentally ill and~~
14.24 ~~dangerous to the public under section 253B.18 and as a sexual psychopathic personality or~~
14.25 ~~as a sexually dangerous person under section 253B.185; the county attorney of the county~~
14.26 ~~from which the person was committed or the county of financial responsibility; or the~~
14.27 ~~commissioner may petition the judicial appeal panel for a rehearing and reconsideration~~
14.28 ~~of a decision of the special review board under section 253B.185, subdivision 9. The~~
14.29 ~~petition must be filed with the Supreme Court within 30 days after the decision is mailed~~
14.30 ~~by the commissioner as required in section 253B.185, subdivision 9, paragraph (f). The~~
14.31 ~~hearing must be held within 180 days of the filing of the petition unless an extension is~~
14.32 ~~granted for good cause. If no party petitions the judicial appeal panel for a rehearing~~
14.33 ~~or reconsideration within 30 days, the judicial appeal panel shall either issue an order~~
14.34 ~~adopting the recommendations of the special review board or set the matter on for a~~
14.35 ~~hearing pursuant to this paragraph.~~

15.1 ~~(e)~~ (b) For an appeal under paragraph (a) ~~or (b)~~, the Supreme Court shall refer the
15.2 petition to the chief judge of the judicial appeal panel. The chief judge shall notify the
15.3 patient, the county attorney of the county of commitment, the designated agency, the
15.4 commissioner, the head of the treatment facility, any interested person, and other persons
15.5 the chief judge designates, of the time and place of the hearing on the petition. The notice
15.6 shall be given at least 14 days prior to the date of the hearing.

15.7 ~~(d)~~ (c) In an appeal under paragraph (a), any person may oppose the petition. The
15.8 patient, the patient's counsel, the county attorney of the committing county or the county of
15.9 financial responsibility, and the commissioner shall participate as parties to the proceeding
15.10 pending before the judicial appeal panel ~~and shall, except when the patient is committed~~
15.11 ~~solely as mentally ill and dangerous, no later than 20 days before the hearing on the~~
15.12 ~~petition, inform the judicial appeal panel and the opposing party in writing whether they~~
15.13 ~~support or oppose the petition and provide a summary of facts in support of their position.~~

15.14 (d) The judicial appeal panel may appoint examiners and may adjourn the hearing
15.15 from time to time. It shall hear and receive all relevant testimony and evidence and make a
15.16 record of all proceedings. The patient, the patient's counsel, and the county attorney of the
15.17 committing county or the county of financial responsibility have the right to be present and
15.18 may present and cross-examine all witnesses and offer a factual and legal basis in support
15.19 of their positions. The petitioning party seeking discharge or provisional discharge bears
15.20 the burden of going forward with the evidence, which means presenting a prima facie
15.21 case with competent evidence to show that the person is entitled to the requested relief.
15.22 If the petitioning party has met this burden, the party opposing discharge or provisional
15.23 discharge bears the burden of proof by clear and convincing evidence that the discharge or
15.24 provisional discharge should be denied. A party seeking transfer under section 253B.18,
15.25 subdivision 6, ~~or 253B.185, subdivision 11~~, must establish by a preponderance of the
15.26 evidence that the transfer is appropriate.

15.27 Sec. 18. Minnesota Statutes 2012, section 253B.19, is amended by adding a
15.28 subdivision to read:

15.29 Subd. 2a. **Receipt of biennial report.** (a) Within 28 days after the commissioner
15.30 submits a biennial report under section 253B.185, subdivision 9a, the patient or the
15.31 patient's attorney may file supplemental written argument, affidavits, and exhibits, which
15.32 must be served on the county attorney. Within 14 days of the service of supplemental
15.33 documents by the patient or the patient's attorney, the county attorney of the committing
15.34 county or county of financial responsibility may file and serve a written response.

16.1 (b) Within 60 days after receiving the biennial report, the judicial appeal panel shall
16.2 determine whether to set the matter for a hearing. A hearing must be conducted unless the
16.3 judicial appeal panel determines that the biennial report and any supplemental documents
16.4 fail to present a prima facie case with competent evidence that the patient is entitled to
16.5 transfer out of a secure treatment facility, a provisional discharge, or discharge from
16.6 commitment. The judicial appeal panel shall allow the executive director to request a
16.7 hearing at any time. The judicial appeal panel may, in its discretion, require a hearing at
16.8 any time for good cause.

16.9 (c) If a hearing is ordered under paragraph (b), the hearing must be held within 180
16.10 days after the order, unless an extension is granted for good cause. The patient, the patient's
16.11 counsel, and the county attorney of the committing county or the county of financial
16.12 responsibility shall participate as parties to the proceeding pending before the judicial
16.13 appeal panel and shall, no later than 20 days before the hearing on the petition, inform the
16.14 judicial appeal panel and the opposing party in writing whether they support or oppose
16.15 transfer, provisional discharge, or discharge, and provide a summary of facts in support
16.16 of their position. The judicial appeal panel may appoint examiners and may adjourn the
16.17 hearing from time to time. It shall hear and receive all relevant testimony and evidence and
16.18 make a record of all proceedings. The patient, the patient's counsel, and the county attorney
16.19 of the committing county or the county of financial responsibility have the right to be
16.20 present and may present and cross-examine all witnesses and offer a factual and legal basis
16.21 in support of their positions. The party opposing discharge or provisional discharge bears
16.22 the burden of proof by clear and convincing evidence that the discharge or provisional
16.23 discharge should be denied. A party seeking transfer under section 253B.185, subdivision
16.24 11, must establish by a preponderance of the evidence that the transfer is appropriate.

16.25 (d) The provisions of this subdivision apply to individuals committed under section
16.26 253B.185 and individuals committed under both sections 253B.18 and 253B.185. The
16.27 procedures in section 253B.185, subdivision 10, for victim notification and right to submit
16.28 a statement apply to hearings under this subdivision. A hearing under this subdivision is
16.29 considered to be a commitment proceeding under section 8.01.

16.30 Sec. 19. Minnesota Statutes 2012, section 253B.19, subdivision 3, is amended to read:

16.31 Subd. 3. **Decision.** A majority of the judicial appeal panel shall rule upon the
16.32 petition under subdivision 2, paragraph (a), or upon the review of a biennial report or
16.33 hearing under subdivision 2a. The panel shall consider the petition de novo. The order
16.34 of the judicial appeal panel shall supersede an order of the commissioner under section

17.1 253B.18, subdivision 5. No order of the judicial appeal panel granting a transfer, discharge
17.2 or provisional discharge shall be made effective sooner than 15 days after it is issued.

17.3 In a hearing under subdivision 2, the panel may not consider petitions for relief other
17.4 than those considered by the commissioner or special review board from which the appeal
17.5 is taken. The judicial appeal panel may not grant a transfer or provisional discharge on
17.6 terms or conditions that were not presented to the commissioner or the special review board.

17.7 Sec. 20. Minnesota Statutes 2012, section 609.485, subdivision 2, is amended to read:

17.8 Subd. 2. **Acts prohibited.** Whoever does any of the following may be sentenced as
17.9 provided in subdivision 4:

17.10 (1) escapes while held pursuant to a lawful arrest, in lawful custody on a charge or
17.11 conviction of a crime, or while held in lawful custody on an allegation or adjudication
17.12 of a delinquent act;

17.13 (2) transfers to another, who is in lawful custody on a charge or conviction of a
17.14 crime, or introduces into an institution in which the latter is confined, anything usable in
17.15 making such escape, with intent that it shall be so used;

17.16 (3) having another in lawful custody on a charge or conviction of a crime,
17.17 intentionally permits the other to escape;

17.18 (4) escapes while in a facility designated under section 253B.18, subdivision 1,
17.19 pursuant to a court commitment order after a finding of not guilty by reason of mental
17.20 illness or mental deficiency of a crime against the person, as defined in section 253B.02,
17.21 subdivision 4a. Notwithstanding section 609.17, no person may be charged with or
17.22 convicted of an attempt to commit a violation of this clause;

17.23 (5) escapes while in or under the supervision of a facility or authority designated under
17.24 section 246B.01, subdivision 2a; 246B.02; 253B.18, subdivision 1; 253B.185, ~~subdivision~~
17.25 subdivisions 1, paragraph (d); and 1c; or Minnesota Statutes 1992, section 526.10;

17.26 (6) escapes while on pass status or provisional discharge according to section
17.27 253B.18 or 253B.185; or

17.28 (7) escapes while a civilly committed sex offender in the Minnesota sex offender
17.29 program as defined in section 246B.01, subdivision 1a, or subject to a court hold order
17.30 under section 253B.185.

17.31 For purposes of clauses (1) and (7), "escapes while held in lawful custody" or
17.32 "escapes while a civilly committed sex offender in the Minnesota sex offender program"
17.33 includes absconding from electronic monitoring or removing an electronic monitoring
17.34 device from the person's body.

18.1 Sec. 21. **REVISOR'S INSTRUCTION.**

18.2 The revisor shall codify sections and amendments in this act consistent with the
18.3 recodification of statutory sections providing for civil commitment of sexually dangerous
18.4 persons and persons with sexual psychopathic personalities in H.F. No. 947, if enacted
18.5 this legislative session.

18.6 Sec. 22. **REPEALER.**

18.7 Minnesota Statutes 2012, section 253B.185, subdivision 9, is repealed effective
18.8 August 1, 2013.

18.9 Sec. 23. **EFFECTIVE DATE; APPLICATION; IMPLEMENTATION.**

18.10 (a) Except as otherwise provided in this section, this article is effective August
18.11 1, 2013.

18.12 (b) Sections 3 and 4 apply only to petitions for civil commitment filed on or after
18.13 August 1, 2013.

18.14 (c) Petitions for a reduction in custody filed under Minnesota Statutes, section
18.15 253B.185, subdivision 9, before August 1, 2013, will continue to proceed under the laws
18.16 and procedures in effect on July 31, 2013.

18.17 (d) Notwithstanding the requirements of section 5 (Minnesota Statutes, section
18.18 253B.185, subdivision 9a), the biennial report required under that section applies to
18.19 patients with pending petitions no sooner than 12 months after the final disposition of a
18.20 petition for reduction in custody that was filed before August 1, 2013.

18.21 (e) For persons civilly committed on petitions filed before August 1, 2013, and who
18.22 are otherwise eligible for a biennial review, the commissioner may initiate the biennial
18.23 review based on either the first commitment anniversary date after August 1, 2014, or the
18.24 second anniversary date after August 1, 2014.

18.25 (f) Section 20 is effective August 1, 2013, and applies to crimes committed on or
18.26 after that date.

APPENDIX
Article locations in H1139-2

ARTICLE 1	STRICT AND INTENSIVE SUPERVISION AND TREATMENT AND PUBLIC EDUCATION CAMPAIGN	Page.Ln 1.10
ARTICLE 2	CIVIL COMMITMENT MODIFICATIONS	Page.Ln 2.17

253B.185 SEXUAL PSYCHOPATHIC PERSONALITY; SEXUALLY DANGEROUS.

Subd. 9. **Petition for reduction in custody.** (a) This subdivision applies only to committed persons as defined in paragraph (b). The procedures in subdivision 10 for victim notification and right to submit a statement apply to petitions filed and reductions in custody recommended under this subdivision.

(b) As used in this subdivision:

(1) "committed person" means an individual committed under this section, or under this section and under section 253B.18, as mentally ill and dangerous. It does not include persons committed only as mentally ill and dangerous under section 253B.18; and

(2) "reduction in custody" means transfer out of a secure treatment facility, a provisional discharge, or a discharge from commitment. A reduction in custody is considered to be a commitment proceeding under section 8.01.

(c) A petition for a reduction in custody or an appeal of a revocation of provisional discharge may be filed by either the committed person or by the head of the treatment facility and must be filed with and considered by a panel of the special review board authorized under section 253B.18, subdivision 4c. A committed person may not petition the special review board any sooner than six months following either:

(1) the entry of judgment in the district court of the order for commitment issued under section 253B.18, subdivision 3, or upon the exhaustion of all related appeal rights in state court relating to that order, whichever is later; or

(2) any recommendation of the special review board or order of the judicial appeal panel, or upon the exhaustion of all appeal rights in state court, whichever is later. The head of the treatment facility may petition at any time. The special review board proceedings are not contested cases as defined in chapter 14.

(d) The special review board shall hold a hearing on each petition before issuing a recommendation under paragraph (f). Fourteen days before the hearing, the committing court, the county attorney of the county of commitment, the designated agency, an interested person, the petitioner and the petitioner's counsel, and the committed person and the committed person's counsel must be given written notice by the commissioner of the time and place of the hearing before the special review board. Only those entitled to statutory notice of the hearing or those administratively required to attend may be present at the hearing. The patient may designate interested persons to receive notice by providing the names and addresses to the commissioner at least 21 days before the hearing.

(e) A person or agency receiving notice that submits documentary evidence to the special review board before the hearing must also provide copies to the committed person, the committed person's counsel, the county attorney of the county of commitment, the case manager, and the commissioner. The special review board must consider any statements received from victims under subdivision 10.

(f) Within 30 days of the hearing, the special review board shall issue written findings of fact and shall recommend denial or approval of the petition to the judicial appeal panel established under section 253B.19. The commissioner shall forward the recommendation of the special review board to the judicial appeal panel and to every person entitled to statutory notice. No reduction in custody or reversal of a revocation of provisional discharge recommended by the special review board is effective until it has been reviewed by the judicial appeal panel and until 15 days after an order from the judicial appeal panel affirming, modifying, or denying the recommendation.